

A. THE SCOPE OF THE FREEDOM OF INFORMATION ACT

All IRS documents are subject to FOIA requests. However, FOIA does not require the IRS to release all documents that are subject to FOIA requests. The IRS needs only to apply the FOIA exceptions and Privacy Act and respond accordingly.

Policy

The Department of Treasury and the IRS policy is to implement the FOIA uniformly and consistently and to provide maximum allowable disclosure of records. Therefore, if a record is requested by a member of the public, and the requester follows the rules for making a FOIA request, that record will be disclosed unless it is appropriately protected from disclosure by one or more of the nine exemptions or by one of the three law enforcement record exclusions.

The Federal Freedom of Information Act applies to documents held by agencies of the executive branch of the Federal Government. The executive branch includes cabinet departments, military departments, government corporations, government controlled corporations, independent regulatory agencies, and other establishments in the executive branch. The FOIA does not apply to elected officials of the Federal Government, including the President, Vice President, Senators, and Representatives. The FOIA does not apply to the Federal judiciary. The FOIA does not apply to private companies; persons who receive Federal contracts or grants; private organizations; or State or local governments.

Background

The Freedom of Information Act established a presumption that records of the Executive Branch of the United States Government are accessible to the people. This was not always the policy regarding disclosure of Federal information. Before the FOIA in 1966, the burden was on the individual to establish a right to examine Government records.

With the passage of FOIA, the burden of proof shifted from the individual to the Government. Those seeking information are no longer required to show a need for information. Instead, the "need to know" standard has now been replaced by a "right to know" standard. The Government now must justify its need for secrecy.

The FOIA sets standards for determining which records must be made available for public inspection and which records (or portions of records) should be withheld from disclosure. The law also provides administrative and judicial remedies for those denied access to records. Above all, the statute requires Federal agencies to provide the fullest possible disclosure of information to the public.

IRS Disclosure Offices

The IRS has Disclosure Offices located across the nation that process FOIA requests for IRS documents. These requests should be addressed to the office which has jurisdiction over the records sought. The list of offices and address is provided in [Appendix A](#).

B. THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996 (EFOIA)

The FOIA contains seven subsections, the first two that establish certain categories of information that must automatically be disclosed by federal agencies. Subsection (a)(1) of FOIA requires disclosure through publication in the Federal Register of information such as:

- (1) descriptions of IRS organization and office addresses;
- (2) statements of the general course and method of IRS operation;
- (3) rules of procedure and descriptions of forms; and
- (4) substantive rules of general applicability and general policy statements.

Section (a)(2) of FOIA requires that the IRS make the following materials available for inspection and copying:

- (1) final opinions made in the adjudication of cases;
- (2) statements of policy and interpretations adopted by an agency, but not published in the Federal Register;
- (3) administrative staff manuals that affect the public;
- (4) copies of records released in response to FOIA requests that the IRS determines have been or will likely be the subject of additional requests; and
- (5) a general index of these four categories of records.

Of these documents, those created on or after November 1, 1996, must be made available electronically. To comply with section (a)(2) of FOIA the IRS maintains two Reading Rooms. One IRS Reading Room is physically located in room 1621 of the IRS Headquarters building at 1111 Constitution Avenue, NW in Washington, DC 20224 and is open from 9 AM to 4 PM Monday through Fridays, except holidays. The public entrance to the Reading Room is on Pennsylvania Avenue, NW between 10th and 12th streets. The phone number is 202-622-5164. The second, IRS' Electronic Reading Room is located on the IRS web site at <http://www.irs.gov/foia/index.html>.

The form in which IRS maintains a record does not affect its availability. A requester may seek a printed or typed document, tape recording, map, photograph, computer printout, computer tape or disk, or a similar item. The 1996 FOIA amendments affirm the general policy that any record, regardless of the form in which it is stored, that is in the possession and control of IRS is usually considered to be an IRS record under the FOIA. Although the FOIA occasionally uses terms other than "record," including "information" and "matter," the definition of "record" made by the 1996 amendments should leave no doubt about the breadth of the policy or the interchangeability of terms.

Of course, not all records that can be requested under the FOIA must be disclosed. Information that is exempt from disclosure is described below in Section E, "Reasons Access May Be Denied Under the FOIA."

FOIA requires that each request reasonably describe the records being sought. Each request must be specific enough to permit a professional employee of the IRS who is familiar with the subject matter to locate the record in a reasonable period of time.

Many people include their telephone number with their requests. Some questions about the scope of a request can be resolved quickly when an IRS Disclosure Officer can call the requester to clarify the request. Sometimes, IRS will help a requester identify a specific document that contains the information being sought.

Requesters should make requests as specific as possible. If a particular document is required, it should be identified precisely, preferably by date and title. However, a request does not always have to be that specific. A requester who cannot identify a specific record should clearly explain his or her needs. A requester should make sure, however, that a request is broad enough to include all desired information, but narrow enough to be practical.

For example, in the case of a requester who wants all tax records that pertain to him/her, the request would be impossible to satisfy and the research and copying fees would be astronomical. As a result, the request would be returned. It would be much better if the requester could narrow the request by asking for his/her tax returns for the last 3 years.

FOIA applies to only existing records. FOIA does not require the IRS to collect information it does not have, or to research or analyze data for a requester. The IRS is only required to look for an existing record or document in response to a FOIA request. The IRS is not obliged to create a new record to comply with a FOIA request. However, when records are maintained in a computer, the IRS is required to retrieve information in response to a FOIA request. The process of retrieving the information may result in the creation of a new document when the data is printed out on paper or written on computer tape or disk. Since this may be the only way computerized data can be disclosed, agencies are required to provide the data even if it means a new document must be created.

C. MAKING A FOIA REQUEST

The first step in making a request under the FOIA is to identify the IRS office that is most likely to have the records. A FOIA request must be addressed to an IRS Disclosure Office that services FOIA requests. See [Appendix A](#) for the list of offices and addresses.

Often, the requester knows beforehand which IRS office has the desired records. The FOIA request must be in writing to the office with jurisdiction over the records sought. Letters requesting records under the FOIA can be short and simple. No one should need a lawyer to make a FOIA request.

IRS has prepared a document at [Appendix B](#) - "*How to Make a Freedom of Information Act Request*" that describes the request process in greater detail. A requester who follows the IRS's specific procedures may receive a faster response.

There are four basic elements to a FOIA request letter. First, the letter should state that the request is being made under the Freedom of Information Act. Second, the request should identify the records that are being sought as specifically as possible. Third, the name and address of the requester must be included along with a copy of the requester's driver's license or a notarized statement swearing to or affirming their identity if the request involves the tax records of an individual or a business. In this case, the authority of the requester to receive such records must be established. Fourth, the requester should make a firm commitment to pay any fees which may apply.

Section (a)(4) of FOIA requires the IRS to establish fees associated with searching for, reviewing and copying records, which may vary depending on the status of the requester or the purpose of the request. As a result, a requester may have to provide information on their status and their purpose for making the request to allow the IRS to determine the appropriate fees. Different fees can be charged to commercial users, representatives of the news media, educational or noncommercial scientific institutions, and individuals. More information on fees can be found below in Section E, "Fees and Waivers."

FOIA Optional Items

There are several optional items that are often included in a FOIA request. The first is the telephone number of the requester. This allows an IRS employee processing a request to speak with the requester, if necessary.

A second optional item is a limitation on the fees that the requester is willing to pay. It is common for a requester to ask to be notified in advance if the charges will exceed a fixed amount. This allows the requester to modify or withdraw a request if the cost is too high. Also, by stating a willingness to pay a set fee amount in the original request letter, a requester may avoid the necessity of additional correspondence and delay.

A third optional item sometimes included in a FOIA request is a request for a waiver or a reduction of fees. Fees must be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding

of the operations or activities of IRS and is not primarily in the commercial interest of the requester. Decisions about granting fee waivers are separate and distinct from decisions about the amount of fees that a requester can be charged.

A fourth optional item is the specification of the form or format in which the requested material is sought. This is an important consideration if a requester desires the responsive information in a particular format. For example, information maintained by IRS in an electronic form can be provided in that same or a similar form, such as on a three inch computer diskette or on a CD-ROM. FOIA requires agencies to help requesters by providing information in the form requested, including requests for the electronic form of records, if the IRS can readily reproduce it in that form. For more information see section (f)(2) of FOIA.

A fifth optional consideration is seeking expedited processing of a request by showing a "compelling need" for a speedy response. The Department of Treasury regulations authorize expedited processing where a requester demonstrates a "compelling need" for quick response. A "compelling need" warranting faster FOIA processing exists in two categories of circumstances. In the first category, the failure to obtain the records within an expedited deadline poses an imminent threat to an individual's life or physical safety. The second category requires a request by someone "primarily engaged in disseminating information" and "urgency to inform the public concerning actual or alleged Federal Government activity." For more information see section (a)(6)(E) of the FOIA ([link to FOIA](#)).

IRS may determine other circumstances, to be prescribed by regulation, qualifying for expedited processing. The specified categories for compelling need are intended to be narrowly applied. A threat to an individual's life or physical safety qualifying for expedited access should be imminent. A reasonable person should be able to appreciate that a delay in obtaining the requested information poses such a threat. A person "primarily engaged in disseminating information" should not include individuals who are engaged only incidentally in the dissemination of information. The standard of "primarily engaged" requires that information dissemination be the main activity of the requester, although it need not be his or her sole occupation. A requester who only incidentally engages in information dissemination, besides other activities, would not satisfy this requirement.

The standard of "urgency to inform" requires that the information requested should pertain to a matter constituting a current exigency for the American public and that a reasonable person might conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest. The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

A requester should keep a copy of the request letter and related correspondence until the request has been finally resolved.

D. REQUIREMENTS FOR IRS RESPONSES

Under FOIA, the IRS is required to determine within 20 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of a request whether to respond to the request. The actual disclosure of documents is required to follow promptly thereafter. If a request is denied in whole or in part, the IRS must tell the requester the reasons for the denial. Under section (a)(6)(A)(i) of the FOIA the IRS must also tell the requester that there is a right to appeal any adverse determination to the head of the IRS or his or her designee.

The FOIA permits IRS to extend the time limits in exceptional circumstances, initially for 10 days and, if additional time is needed, in 30 day increments thereafter. These circumstances include the need to collect records from remote locations, review large numbers of records, and consult with other agencies. The IRS is required to notify the requester whenever an extension is invoked. IRS may also make a showing of exceptional circumstances based on the amount of material classified, based upon the resources being devoted to the review of material of public interest, or based upon the number of requests for records by courts or administrative tribunals. A court also shall consider a requester's unwillingness to reasonably limit the scope of his or her request or to agree upon a processing timeframe prior to seeking judicial review.

What does not qualify as an "exceptional circumstance" under FOIA? Predictable IRS backlogs for FOIA requests do not constitute exceptional circumstances for purposes of the act. Routine backlogs of requests for records under the FOIA do not give IRS an automatic excuse to ignore the time limits. A court shall consider IRS's efforts to reduce the number of pending requests in determining whether exceptional circumstances exist.

The best advice to requesters is to be patient. The law allows a requester to consider that his or her request has been denied if it has not been decided within the time limits. This permits the requester to file a lawsuit in Federal District Court. However, the filing of a judicial appeal will not necessarily result in any faster processing of the request.

E. FEES AND FEE WAIVERS

FOIA requesters may have to pay fees covering some or all of the costs of processing their requests. FOIA establishes three types of fees that may be charged.

1. Fees may be imposed to recover the cost of copying documents. IRS has a fixed price for making copies using copying machines. A requester is usually charged the actual cost of copying computer tapes, photographs, and other nonstandard documents.
2. Fees may also be imposed to recover the costs of searching for documents. This includes the time spent looking for material responsive to a request. FOIA defines "search" as a "review, manually or by automated means," of "IRS records for the purpose of locating those records responsive to a request." Under the FOIA, IRS need not create documents that do not exist. Computer records found in a database rather than a file cabinet may require the application of codes or some form of programming to retrieve the information.

Under the definition of "search" in the amendments, the review of computerized records would not amount to the creation of records. Otherwise, it would be virtually impossible to get records maintained completely in an electronic format, like computer database information, because some manipulation of the information likely would be necessary to search the records. A requester can minimize search charges by making clear, narrow requests for identifiable documents whenever possible.

3. Fees may be charged to recover review costs from commercial requesters only. Review is the process of examining documents to determine whether any portion is exempt from disclosure. Review charges only include costs incurred during the initial examination of a document. IRS may not charge for any costs incurred in resolving issues of law or policy that may arise while processing a request.

Different fees apply to different requesters. There are three categories of FOIA requesters:

1. Representatives of the news media, and educational or noncommercial scientific institutions whose purpose is scholarly or scientific research. A requester in this category who is not seeking records for commercial use can only be billed for reasonable standard document duplication charges. A request for information from a representative of the news media is not considered to be for commercial use if the request is in support of a news gathering or dissemination function.
2. FOIA requesters seeking records for commercial use. Commercial use is not defined in the law, but it generally includes profit making activities. A commercial user can be charged reasonable standard charges for document duplication, search, and review.
3. Other requesters include everyone not in the first two categories. People seeking information for personal use, public interest groups, and nonprofit organizations are examples of requesters who fall into the third group. Charges for these requesters are

limited to reasonable standard charges for document duplication and search. Review costs may not be charged.

Small requests are free for a requester in the first and third categories. This includes all requesters except commercial users. There is no charge for the first 2 hours of search time and for the first 100 pages of documents. A noncommercial requester who limits a request to a small number of easily found records would not pay any fees at all. However, if a requester breaks up a large request into smaller requests in order to avoid fees, the smaller requests may be aggregated and charged as though only one request had been made.

In addition, the law also prevents agencies from charging fees if the cost of collecting the fee would exceed the amount collected. This limitation applies to all requests, including those seeking documents for commercial use. Thus, if the allowable charges for any FOIA request are less than \$10.00, no fees are imposed.

IRS sets charges for duplication, search, and review based on its own costs. IRS also sets its own threshold for minimum charges. See [Appendix C](#) - IRS Fee Schedule.

FOIA requires that IRS waive or reduce fees if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of IRS and is not primarily in the commercial interest of the requester.

Determinations about fees are separate and distinct from determinations about fee waivers. For example, a requester who can demonstrate that he or she is a news reporter may only be charged duplication fees. However, a requester found to be a reporter is not automatically entitled to a waiver of those fees. A reporter who seeks a waiver must demonstrate that the request also meets the standards for waivers. Normally, only after a requester has been categorized to determine the applicable fees does the issue of a fee waiver arise. A requester who seeks a fee waiver should ask for a waiver in the original request letter. However, a request for a waiver can be made at a later time. The requester should describe how disclosure would contribute to public understanding of the operations or activities of IRS.

Any requester may ask for a fee waiver. Some will find it easier to qualify than others. A news reporter who is only charged duplication costs may still ask that the charges be waived because of the public benefits that will result from disclosure. A representative of the news media, a scholar, or a public interest group is more likely to qualify for a waiver of fees. A commercial user may find it difficult to qualify for waivers.

The eligibility of other requesters will vary. A key element in qualifying for a fee waiver is the relationship of the information to public understanding of the operations or activities of IRS.

Another important factor is the ability of the requester to convey that information to other interested members of the public. A requester is not eligible for a fee waiver solely because of indigence.

F. REASONS ACCESS MAY BE DENIED UNDER THE FOIA

IRS may refuse to disclose an IRS record that falls under one of the FOIA's nine statutory exemptions. The exemptions protect against the disclosure of information that would harm national defense or foreign policy, privacy of individuals, proprietary interests of business, functioning of the government, and other important interests.

A document that does not qualify as a “record” may be denied because only IRS records are available under the FOIA. Personal notes of IRS employees may be denied on this basis.

When a record contains some information that qualifies as exempt, the entire record is not necessarily exempt. Instead, the FOIA specifically provides that any reasonably segregable portions of a record must be provided to a requester after the deletion of the portions that are exempt. This is a very important requirement because it prevents IRS from withholding an entire document simply because one line or one page is exempt.

The ease with which records in electronic form or format may be redacted (deleting part of a record to prevent disclosure of material covered by an exemption) makes the determination of the amount of material withheld by IRS at times impossible. FOIA requires the IRS to identify the location of deletions in the released portion of the record and, where technologically feasible, to show the deletion at the place on the record where the deletion was made, unless including that indication would harm an interest protected by an exemption.

Exemption 1. Classified Documents Pertaining to National Defense

The first FOIA exemption permits the withholding of matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified under such executive order. IRS does not generally deal with these types of matters, thus this exemption is rarely used.

Exemption 2. Internal Personnel Rules and Practices

The second FOIA exemption covers matters that are related solely to IRS's internal personnel rules and practices. As interpreted by the courts, there are two separate classes of documents that are generally held to fall within exemption 2.

A. The information relating to personnel rules or internal IRS practices is exempt if it is a trivial administrative matter of no genuine public interest. A rule governing lunch hours for IRS employees is an example.

B. An internal administrative manual can be exempt if disclosure would risk circumvention of law or regulation. In order to fall into this category, the material will normally have to regulate internal IRS conduct rather than public behavior.

Exemption 3. Information Exempt Under Other Laws

The third exemption incorporates into the FOIA other laws that restrict the availability of information. To qualify under this exemption, a statute must require that matters be withheld from the public in such a manner as to leave no discretion to IRS.

Alternatively, the statute must establish particular criteria for withholding or refer to particular types of matters to be withheld. One example of a qualifying statute is Section 6103 of the Internal Revenue Code which governs the disclosure of tax returns and return information.

Exemption 4. Confidential Business Information

The fourth exemption protects from public disclosure two types of information: Trade secrets and confidential business information. A trade secret is a commercially valuable plan, formula, process, or device. This is a narrow category of information. An example of a trade secret is the recipe for a commercial food product.

The second type of protected data is commercial or financial information obtained from a person and is privileged or confidential. The courts have held that data qualifies for withholding under this category if disclosure by the government would likely harm the competitive position of the person who submitted the information to the government. Detailed information on a company's marketing plans, profits, or costs can qualify as confidential business information. Information may also be withheld if disclosure would be likely to impair the government's ability to obtain similar information in the future.

Only information obtained from a person other than IRS qualifies under the fourth exemption. A person is an individual, a partnership, or a corporation. Information that the IRS created on its own cannot normally be withheld under exemption 4.

Exemption 5. Internal Government Communications

The FOIA's fifth exemption applies to internal government documents. An example is a letter from one IRS office to another about a joint decision that has not yet been made. Another example is a memorandum from an IRS employee to his supervisor describing options for conducting the agency's business.

The purpose of the fifth exemption is to safeguard the deliberative policymaking process of government. The exemption encourages frank discussion of policy matters between IRS officials by allowing supporting documents to be withheld from public disclosure. The exemption also protects against premature disclosure of policies before final adoption.

While the policy behind the fifth exemption is well accepted, the application of the exemption is complicated. For example, the exemption protects the policymaking process, but it does not protect purely factual information related to the policy process. Factual information must be disclosed unless it is inextricably intertwined with protected information about an IRS decision. Protection for the decision making process is appropriate only for the period while decisions are being made. Thus, the fifth

exemption has been held to distinguish between documents that are pre-decisional and therefore may be protected, and those that are post-decisional and therefore not subject to protection. Once a policy is adopted, the public has a greater interest in knowing the basis for the decision.

The exemption also incorporates some of the privileges that apply in litigation involving the government. For example, papers prepared by IRS's lawyers can be withheld in the same way that papers prepared by private lawyers for clients are not available through discovery in civil litigation.

Exemption 6. Personal Privacy

The sixth exemption covers personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption protects the privacy interests of individuals by allowing IRS to withhold personal data kept in its files. Only individuals have privacy interests. Corporations and other legal persons have no privacy rights under the sixth exemption.

The exemption requires agencies to strike a balance between an individual's privacy interest and the public's right to know. However, since only a clearly unwarranted invasion of privacy is a basis for withholding, there is a perceptible tilt in favor of disclosure in the exemption. Nevertheless, the sixth exemption makes it harder to obtain information about another individual without the consent of that individual.

The Privacy Act of 1974 also regulates the disclosure of personal information about an individual. The FOIA and the Privacy Act overlap in part, but there is no inconsistency. An individual seeking records about himself or herself should cite both laws when making a request. This ensures that the maximum amount of disclosable information will be released. Records that can be denied to an individual under the Privacy Act are not necessarily exempt under the FOIA.

Exemption 7. Law Enforcement

The seventh exemption allows agencies to withhold law enforcement records to protect the law enforcement process from interference. The exemption has six specific subsections.

- Exemption (7)(A) allows the withholding of a law enforcement record that could reasonably be expected to interfere with enforcement proceedings. This exemption protects an active law enforcement investigation from interference through premature disclosure.

- Exemption (7)(B) allows the withholding of information that would deprive a person of a right to a fair trial or an impartial adjudication. This exemption is rarely used.

- Exemption (7)(C) recognizes that individuals have a privacy interest in information maintained in law enforcement files. If the disclosure of information could reasonably

be expected to constitute an unwarranted invasion of personal privacy, the information is exempt from disclosure.

The standards for privacy protection in exemption 6 and exemption (7)(C) differ slightly. Exemption (7)(C) protects against an unwarranted invasion of personal privacy while exemption 6 protects against a clearly unwarranted invasion. Also, exemption (7)(C) allows the withholding of information that “could reasonably be expected to” invade someone's privacy. Under exemption 6, information can be withheld only if disclosure “would” invade someone's privacy.

- Exemption (7)(D) protects the identity of confidential sources. Information that could reasonably be expected to reveal the identity of a confidential source is exempt. A confidential source can include a State, local, or foreign agency or authority, or a private institution that furnished information on a confidential basis. In addition, the exemption protects information furnished by a confidential source if the data was compiled by a criminal law enforcement authority during a criminal investigation.

- Exemption (7)(E) protects from disclosure information that would reveal techniques and procedures for law enforcement investigations or prosecutions or that would disclose guidelines for law enforcement investigations or prosecutions if disclosure of the information could reasonably be expected to risk circumvention of the law.

- Exemption (7)(F) protects law enforcement information that could reasonably be expected to endanger the life or physical safety of any individual.

Exemption 8. Financial Institutions

The eighth exemption protects information that is contained in or related to examination, operating, or condition reports prepared by or for a bank supervisory agency such as the Federal Deposit Insurance Corporation, the Federal Reserve, or similar agencies. IRS seldom uses this exemption.

Exemption 9. Geological Information

The ninth FOIA exemption covers geological and geophysical information, data, and maps, about wells. IRS seldom uses this exemption.

The FOIA also gives agencies limited authority to respond to a request without either disclosing the records or confirming their existence. Ordinarily, any proper request must receive an answer stating whether there is any responsive information, even if the requested information is exempt from disclosure. In some narrow circumstances, however, acknowledgement of the existence of a record can produce consequences similar to those resulting from disclosure of the record itself. In order to avoid this type of problem, the FOIA contains three “record exclusions.”

The exclusions allow IRS to treat certain exempt records as if the records were not subject to the FOIA. IRS is not required to confirm the existence of three specific categories of records. If these records are requested, IRS may respond that there are

no records responsive to the request. However, these exclusions do not broaden the authority of the IRS to withhold documents from the public. The exclusions are only applicable to information that is otherwise exempt from disclosure.

Exclusion 1

The first exclusion may be used when a request seeks information that is exempt because disclosure could reasonably be expected to interfere with a current law enforcement investigation (exemption (7)(A)). There are three specific prerequisites for the application of this exclusion.

1. The investigation in question must involve a possible violation of criminal law.
2. There must be reason to believe that the subject of the investigation is not already aware that the investigation is underway.
3. Disclosure of the existence of the records—as distinguished from the contents of the records—could reasonably be expected to interfere with enforcement proceedings.

When all of these conditions exist, IRS may respond to a FOIA request for investigatory records as if the records are not subject to the requirements of the FOIA. In other words, the IRS response does not have to reveal that it is conducting an investigation.

Exclusion 2

The second exclusion applies to informant records maintained by IRS criminal law enforcement filed under the informant's name or personal identifier. IRS is not required to confirm the existence of these records unless the informant's status has been officially confirmed. This exclusion helps agencies to protect the identity of confidential informants. Information that might identify informants has always been exempt under the FOIA.

Exclusion 3

The third exclusion only applies to records maintained by the Federal Bureau of Investigation, which pertain to foreign intelligence, counterintelligence, or international terrorism. When the existence of these types of records is classified, the FBI may treat the records as not subject to the requirements of FOIA.

In enacting these exclusions, congressional sponsors stated that it was their intent that agencies must inform FOIA requesters that these exclusions are available for IRS use. Requesters who believe that records were improperly withheld because of the exclusions can seek judicial review.

G. ADMINISTRATIVE APPEAL PROCEDURES

Whenever a FOIA request is denied, IRS must inform the requester of the reasons for the denial and the requester's right to appeal the denial to the head of the agency. A requester may appeal the denial of a request for a document or for a fee waiver. A requester may contest the type or amount of fees that were charged. A requester may appeal any other type of adverse determination. A requester can also appeal because IRS failed to conduct an adequate search for the documents that were requested.

A person whose request was granted in part and denied in part may appeal the part that was denied. If IRS has agreed to disclose some but not all requested documents, the filing of an appeal does not affect the release of the documents that are disclosable. There is no risk to the requester in filing an appeal.

A FOIA appeal is a simple administrative appeal. A lawyer can be helpful, but no one needs a lawyer to file an appeal. Anyone who can write a letter can file an appeal. Appeals to the IRS Office of Appeals at the address listed below may result in the disclosure of some records that had been withheld. A requester who is not convinced that IRS's initial decision is correct should appeal. There is no charge for filing an administrative appeal.

An appeal is filed by sending a letter to:

The IRS Office of Appeals, Riverside Appeals Office
Attn: FOIA Appeal
6377 Riverside Avenue, Suite 110
Riverside, CA 92506

The letter must identify the FOIA request that is being appealed. The envelope containing the letter of appeal should be marked in the lower left-hand corner with the words "Freedom of Information Act Appeal."

The IRS assigns a number to all FOIA requests that are received. If possible this number should be included in the appeal letter, along with the name and address of the requester. It is a common practice to include a copy of the IRS's initial decision letter as part of the appeal, but this is not necessarily required. It can also be helpful for the requester to include a telephone number in the appeal letter.

An appeal will normally include the requester's arguments supporting disclosure of the documents. A requester may include any facts or any arguments supporting the case for reversing the initial decision. However, an appeal letter does not have to contain any arguments at all. It is sufficient to state that the IRS's initial decision is being appealed. The FOIA regulations require that an appeal be postmarked within 35 days after the date of the letter denying access to the information, a fee waiver or inadequate search and within 10 days after the date of the response letter denying expedited processing.

IRS is required to make a decision on an appeal within 20 days (excluding Saturdays, Sundays, and legal holidays). It is possible for IRS to extend the time limits by an additional 10 days. Once the time period has elapsed, a requester may consider that the appeal has been denied and may proceed with a judicial appeal. However, unless there is an urgent need for records, this may not be the best course of action. The courts are not usually sympathetic to appeals based solely on an agency's failure to comply with the FOIA's time limits.

H. FILING A JUDICIAL APPEAL

When an administrative appeal is denied, a requester has the right to appeal the denial in court. A FOIA appeal lawsuit can be filed in the U.S. District Court in the district where the requester lives. The requester can also file suit in the district where the documents are located or in the District of Columbia. When a requester goes to court, the burden of justifying the withholding of documents is on IRS. This is a distinct advantage for the requester.

Most requesters require the assistance of an attorney to file a judicial appeal. A person who files a lawsuit and substantially prevails may be awarded reasonable attorney fees and litigation costs reasonably incurred. Some requesters may be able to handle their own case without an attorney. Since this is not a litigation guide, details of the judicial appeal process have not been included. Anyone considering filing a FOIA lawsuit can begin by reading the provisions of the FOIA on judicial review.

The essential feature of both FOIA and the Privacy Act is that they make Federal IRS accountable for information disclosure policies and practices. While neither law grants an absolute right to examine government documents, both laws establish the right to request records and to receive a response to the request. If a record cannot be released, the requester is entitled to the reason for the denial. The requester also has a right to appeal the denial and, if necessary, to challenge it in court.

These procedural rights granted by the FOIA and the Privacy Act make the laws valuable and workable. As a result, the disclosure of Federal Government information cannot be controlled by arbitrary or unreviewable actions.

Appendix A. IRS DISCLOSURE OFFICES

Disclosure Office Addresses

If you live in:

Mail Your Request to:

Alabama

IRS FOIA Request
New Orleans Disclosure Office
CL:GLD:A3:NOR
Mail Stop 40
600 S. Maestri Place
New Orleans, LA 70130

Alaska

IRS FOIA Request
Oakland Disclosure Office
CL:GLD:A6:SEA:D
Mail Stop W625
915 2nd Avenue
Seattle, WA 98174

Arkansas

IRS FOIA Request
Nashville Disclosure Office
CL:GLD:A3:NAS
MDP 44
801 Broadway, Room 480
Nashville, TN 37203

Arizona

IRS FOIA Request
Phoenix Disclosure Office
CL:GLD:A7:PHX
Mail Stop 7000 PHX
210 E. Earll Drive
Phoenix, AZ 85012

California

IRS FOIA Request
Laguna Niguel Disclosure Office
CL:GLD:A7:LN
24000 Avila Rd., M/S 2201
Laguna Niguel, CA 92677

IRS FOIA Request
Los Angeles Disclosure Office
CL:GLD:A7:LA
Mail Stop 1020
300 N. Los Angeles Street
Los Angeles, CA 90012-3363

Appendix A. IRS DISCLOSURE OFFICES

	IRS FOIA Request Oakland Disclosure Office CL:GLD:A7:OAK 1301 Clay Street, Suite 840-S Oakland, CA 94612
	IRS FOIA Request San Jose Disclosure Office CL:GLD:A7:SJ Mail Stop HQ-4603 55 South Market Street San Jose, CA 95113
Colorado	IRS FOIA Request Denver Disclosure Office CL:GLD:A6:DEN:D Mail Stop 7000 DEN 600 17th Street Denver, CO 80202-2490
Connecticut	IRS FOIA Request Hartford Disclosure Office CL:GLD:A1:HAR William R. Cotter F.O.B. Mail Stop 140 135 High Street Hartford, CT 06103
Delaware	IRS FOIA Request Baltimore Disclosure Office CL:GLD:A2:BAL George Fallon Fed. Bldg. 31 Hopkins Plaza, Room 1210 Baltimore, MD 21201
District of Columbia	IRS FOIA Request Baltimore Disclosure Office CL:GLD:A2:BAL George Fallon Fed. Bldg. 31 Hopkins Plaza, Room 1210 Baltimore, MD 21201

Appendix A. IRS DISCLOSURE OFFICES

Florida	IRS FOIA Request Fort Lauderdale Disclosure Office CL:GLD:A3:FTL Mail Stop 4030 7850 SW 6th Court, Rm. 260 Plantation, FL 33324-3202
	IRS FOIA Request Jacksonville Disclosure Office CL:GLD:A3:JAX Suite 35045, MS 4030 400 West Bay Street Jacksonville, FL 32202-4437
Georgia	IRS FOIA Request Atlanta Disclosure Office CL:GLD:A3:ATL Mail Stop 602D, Room 1905 401 W. Peachtree Street, NW Atlanta, GA 30308
Hawaii	IRS FOIA Request Laguna Niguel Disclosure Office 24000 Avila Rd., M/S 2201 Laguna Niguel, CA 92677
Idaho	IRS FOIA Request Seattle Disclosure Office CL:GLD:A6:SEA:D Mail Stop W625 915 2nd Avenue Seattle, WA 98174
Illinois	IRS FOIA Request Chicago Disclosure Office CL:GLD:A4:CHI Mail Stop 7000 CHI, Room 2820 230 S. Dearborn Street Chicago, IL 60604

Appendix A. IRS DISCLOSURE OFFICES

Indiana	IRS FOIA Request Indianapolis Disclosure CL:GLD:A4:IND Stop 658 575 N. Penn. Avenue Indianapolis, IN 46204
Iowa	IRS FOIA Request St. Paul Disclosure Office CL:GLD:A5:STP Stop 7000 316 N. Robert Street St. Paul, MN 55101
Kansas	IRS FOIA Request St. Louis Disclosure Office CL:GLD:A5:STL Mail Stop 7000 STL 1222 Spruce St., Room 9.206 St. Louis, MO 63103
Kentucky	IRS FOIA Request Covington Campus Disclosure Office CL:GLD:A4:CC Stop 68G 201 W. Rivercenter Blvd. Covington, KY 41011
Louisiana	IRS FOIA Request New Orleans Disclosure Office CL:GLD:A3:NOR Mail Stop 40 600 S. Maestri Place New Orleans, LA 70130
Maine	IRS FOIA Request Boston Disclosure Office CL:GLD:A1:BOS Mail Stop 41150 25 New Sudbury Street Boston, MA 02203

Appendix A. IRS DISCLOSURE OFFICES

Maryland	IRS FOIA Request Baltimore Disclosure Office CL:GLD:A2:BAL George Fallon Fed. Bldg. 31 Hopkins Plaza, Room 1210 Baltimore, MD 21201
Massachusetts	IRS FOIA Request Boston Disclosure Office CL:GLD:A1:BOS Mail Stop 41150 25 New Sudbury Street Boston, MA 02203
Michigan	IRS FOIA Request Detroit Disclosure Office CL:GLD:A4:DET Mail Stop 11 477 W. Michigan Ave. Detroit, MI 48232-6500
Minnesota	IRS FOIA Request St. Paul Disclosure Office CL:GLD:A5:STP Stop 7000 316 N. Robert Street St. Paul, MN 55101
Mississippi	IRS FOIA Request New Orleans Disclosure Office CL:GLD:A3:NOR Mail Stop 40 600 S. Maestri Place New Orleans, LA 70130

Appendix A. IRS DISCLOSURE OFFICES

Missouri	IRS FOIA Request St. Louis Disclosure Office Mail Stop 7000 STL 1222 Spruce St., Room 9.206 St. Louis, MO 63103
Montana	IRS FOIA Request Denver Disclosure Office CL:GLD:A6:DEN:D Mail Stop 7000 DEN 600 17th Street Denver, CO 80202-2490
Nebraska	IRS FOIA Request St. Paul Disclosure Office CL:GLD:A5:STP Stop 7000 316 N. Robert Street St. Paul, MN 55101
Nevada	IRS FOIA Request Phoenix Disclosure Office CL:GLD:A7:PHX Mail Stop 7000 PHX 210 E. Earll Drive Phoenix, AZ 85012
New Hampshire	IRS FOIA Request Boston Disclosure Office CL:GLD:A1:BOS Mail Stop 41150 25 New Sudbury Street Boston, MA 02203
New Mexico	IRS FOIA Request Phoenix Disclosure Office CL:GLD:A7:PHX Mail Stop 7000 PHX 210 E. Earll Drive Phoenix, AZ 85012

Appendix A. IRS DISCLOSURE OFFICES

New Jersey	IRS FOIA Request Springfield Disclosure Office CL:GLD:A2:SPR 955a South Springfield Ave. Springfield, NJ 07081
New York Brooklyn, Queens & the counties of Nassau & Suffolk	IRS FOIA Request t Brooklyn Disclosure Office CL:GLD:A1:BRO 10 Metro Tech Center 625 Fulton Street Brooklyn, NY 11201-5404
Manhattan, Staten Island, Bronx & counties of Rockland & Westchester	IRS FOIA Request Manhattan Disclosure Office CL:GLD:A1:MAN 110 W. 44th Street New York, NY 10036
	IRS FOIA Request Buffalo Disclosure Office CL:GLD:A1:BUF111 West Huron St., Room 504 Buffalo, NY 14201
North Carolina	IRS FOIA Request Greensboro Disclosure Office CL:GLD:A2:GRE 320 Federal Place, Room 409 Greensboro, NC 27401
North Dakota	IRS FOIA Request St. Paul Disclosure Office CL:GLD:A5:STP Stop 7000 316 N. Robert Street St. Paul, MN 55101

Appendix A. IRS DISCLOSURE OFFICES

Ohio	IRS FOIA Request Cincinnati Disclosure Office CL:GLD:A4:CIN Post Office Box 1818 550 Main Street, Rm. 7019 Cincinnati, OH 45201
Oklahoma	IRS FOIA Request Oklahoma City Disclosure Office CL:GLD:A5:OKC Mail Stop 7000 OKC 55 N. Robinson Oklahoma City, OK 73102
Oregon	IRS FOIA Request Seattle Disclosure Office CL:GLD:A6:SEA:D Mail Stop W625 915 2nd Avenue Seattle, WA 98174
Pennsylvania	IRS FOIA Request Philadelphia Disclosure Office CL:GLD:A2:PHI 600 Arch Street, Room 3214 Philadelphia, PA 19106
Rhode Island	IRS FOIA Request Hartford Disclosure Office CL:GLD:A1:HAR William R. Cotter F.O.B. Mail Stop 140 135 High Street Hartford, CT 06103

Appendix A. IRS DISCLOSURE OFFICES

South Carolina IRS FOIA Request
Greensboro Disclosure Office
CL:GLD:A2:GRE
320 Federal Place, Room 409
Greensboro, NC 27401

South Dakota IRS FOIA Request
St. Paul Disclosure Office
CL:GLD:A5:STP
Stop 7000
316 N. Robert Street
St. Paul, MN 55101

Tennessee IRS FOIA Request
Nashville Disclosure Office
CL:GLD:A3:NAS
MDP 44
801 Broadway, Room 480
Nashville, TN 37203

Texas IRS FOIA Request
Austin Disclosure Office
CL:GLD:A5:AUS
Mail Stop 7000 AUS
300 East 8th Street, Room 262
Austin, TX 78701

IRS FOIA Request
Dallas Disclosure Office
CL:GLD:A5:DAL
Mail Stop 7000 DAL
1100 Commerce Street
Dallas, TX 75242

Appendix A. IRS DISCLOSURE OFFICES

	IRS FOIA Request Houston Disclosure Office CL:GLD:A5:HOU Mail Stop 7000 HOU 1919 Smith Street Houston, TX 77002
Utah	IRS FOIA Request Denver Disclosure Office CL:GLD:A6:DEN:D Mail Stop 7000 DEN 600 17th Street Denver, CO 80202-2490
Vermont	IRS FOIA Request Boston Disclosure Office CL:GLD:A1:BOS Mail Stop 41150 25 New Sudbury St. Boston, MA 02203
Virginia	IRS FOIA Request Richmond Disclosure Office CL:GLD:A2:RIC 400 N. 8 th Street, Rm. 1068 Richmond, VA 23240
Washington	IRS FOIA Request Seattle Disclosure Office CL:GLD:A6:SEA:D Mail Stop W625 915 2nd Avenue Seattle, WA 98174

Appendix A. IRS DISCLOSURE OFFICES

West Virginia	IRS FOIA Request Cincinnati Disclosure Office CL:GLD:A4:CIN Post Office Box 1818 550 Main Street, Rm. 7019 Cincinnati, OH 45201
Wisconsin	IRS FOIA Request Milwaukee Disclosure Office CL:GLD:A4:MIL Mail Stop 7000 MIL 310 W. Wisconsin Avenue Milwaukee, WI 53203-2221
Wyoming	IRS FOIA Request Denver Disclosure Office CL:GLD:A6:DEN:D Mail Stop 7000 DEN 600 17th Street Denver, CO 80202-2490
All APO and FPO addresses, and American Samoa, nonpermanent residents of Guam or the Virgin Island*, Puerto Rico.	IRS FOIA Request Headquarters, Freedom of Information Office CL:GLD:D:F 1111 Constitution Ave.,NW Washington, DC 20224
IRS Headquarters For IRS headquarters policy documents	IRS FOIA Request Headquarters, Freedom of Information Office CL:GLD:D:F 1111 Constitution Ave.,NW Washington, DC 20224

Appendix B. How to Write Your Freedom of Information Act (FOIA) Request

Before writing your request, please take some time to review the documents available to you on the irs.gov web pages. You may be able to find what you are looking for in a few minutes. If you cannot find what you are looking for on the irs.gov web pages, you may, after searching the web pages, have a better understanding of what you will be requesting in your FOIA letter.

FOIA provides that any person may make a request for IRS records. The request must meet the following criteria (the criteria numbers correspond with the numbered sections in the sample FOIA request below):

Your FOIA request must include the address of the requester so that the IRS can properly respond. You may also wish to include your phone number where an IRS Disclosure Officer can contact you.

Your FOIA request should be addressed to the correct IRS Office. See [Appendix A](#) for a list of IRS Disclosure Offices and addresses. You should also write “FOIA” on your envelope.

Your FOIA request must state that your request is being made pursuant to the Freedom of Information Act.

Your FOIA request must reasonably describe the records being requested as specifically as possible. If possible, you should give the name, subject matter, location and years at issue of the requested documents. You must state whether you wish to inspect the records or desire to have a copy made and furnished without first inspecting those records. If you attach copies of any correspondence pertaining to the documents you are requesting, the IRS Disclosure Officers may be able to respond to your request quicker.

Your FOIA request must state what category of requester you are, so that the IRS Disclosure Officer can properly determine any applicable fees. The categories of requesters are:

commercial use requesters,
media requesters,
educational institutional requesters,
non-commercial scientific institutional requesters, and
other (including individual requesters)

For more information on the categories please see [31 CFR 1.5\(b\)\(2\)](#).

Your FOIA request may require proof of your identity and your authority to access the records, depending on the nature of the records you are requesting. To protect your privacy the IRS will not, without proof of your identity, release to you, or anyone else, documents that should be available **only** to you.

a) If the information you are requesting is available to the general public you do not need to provide proof of identity or authority to access those records.

b) If the records that you are requesting are confidential and not available to the general public (subject to the Privacy Act or Internal Revenue Code 6103) **YOU MUST** submit proof of identity and proof of your authority to access the information. For instructions on proving your identity and your authority to access information see the Section “[To Establish Identify and Right to Access](#)” below.

Your FOIA request must include an agreement to pay all fees that might be incurred through processing your request. You may wish to specify an upper limit of the amount of money you are willing to pay to satisfy your request.

Your FOIA request must be in writing and signed by the person making the request.

EXAMPLE FOIA LETTER

- (1) Your name or your company's name
Your address or your company's address
Your phone number (optional)

Date

- (2) Internal Revenue Service
[Your local Disclosure Office address; See [Appendix A](#) for a list of office addresses]

Dear Disclosure Officer:

- (3) This is a request under the Freedom of Information Act.
- (4) I request that a copy of the following documents [identify the documents or information as specifically as possible] be provided to me. I do not wish to inspect the documents first.
- (5) In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

[Sample requester descriptions (**please choose only one** if applicable):

An individual seeking information for personal use and not for a commercial use.

"A media requester", a representative of the news media affiliated with the XXXX newspaper (magazine, television station, etc.), and this request is made as part of newsgathering and not for a commercial use.

"A educational institutional requester" or "a non-commercial scientific institutional requester" affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

"A commercial use requester" affiliated with a private corporation and am seeking information for use in the company's business.]

- (6) As proof of identity I am including a photocopy of my drivers license.
- (7) I am willing to pay fees for this request up to a maximum of \$XX. If you estimate that the fees will exceed this limit, please inform me first.

Thank you for your consideration of this request.

- Sincerely,
(8) [your signature]

Additional Options for Your FOIA Request

You may also include in the body of your FOIA request additional optional requests. These requests require you to establish certain criteria by providing appropriate additional information.

Your FOIA request may include a request that the fees be reduced or waived. To qualify for a waiver you must include specific details. For more information see 31 CFR 1.5(b)(7) and 1.7(d).

Your FOIA request can include a request that the documents be provided to you in an alternative media. For more information see Section (a)(3)(B) of FOIA (5 U.S.C. 552(a)(3)(B)).

If you qualify under stipulated criteria you may be able to request expedited processing of your FOIA request. To receive expedited processing you must have a 'compelling need' for expedited processing and you must include specific details concerning your need for expedited processing in your FOIA request. For information on compelling needs and what qualifies for expedited processing see (31 CFR Part 1).

Where to Send Your Request

A FOIA request should generally be addressed to the IRS Disclosure Office that services your current address. If you know that the records that you are requesting are located in another area you should direct your request to the Disclosure Office where those records are kept. [See Appendix A](#). If you are requesting headquarters IRS policy documents please write to the Headquarters Freedom of Information Office address provided at the end of the address list.

To Establish Proof of Identity and Right to Access

To receive copies of documents protected under the Privacy Act or Internal Revenue Code 6103 you must show proof of identity and demonstrate your right to access by:

- a) Signing your FOIA request, including your address in the request, **and** attaching a copy of one form of identification bearing your signature (such as your drivers license), **or**
- b) Presenting a notarized statement swearing to or affirming your identity, **or**
- c) Presenting a sworn statement as to your identity, under penalty of perjury (You may include in your FOIA request "I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on [date]. I am [your name] and I am requesting...."), **or**

Internal Revenue Service – Guide to the Freedom of Information Act

c) Providing an official document showing proof of entitlement as the sole proprietor, member of partnership, corporate officer, shareholder, etc., if requesting the records of a business.

Persons requesting documents on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the related records. Such requests must meet the requirements of 26 CFR 601.702(c)(4). Requests for tax return information must be consistent with the provisions of 26 CFR 301.6103(c)-1 and IRC 6103(e).

For records of a deceased individual you must provide a document showing proof of administrator, executor, or trustee of estate; if an heir at law, next of kin, or beneficiary under the will, proof of a material interest which will be affected by information contained in the requested documents and proof of the kinship, i.e. copy of birth certificate or will.

Appendix C. IRS FOIA Fee Schedule

Commercial requesters	Copying charges	\$.20 per page.
	Search charges	\$17.00 per hour or fraction of an hour (charges for computer searches may include search time expended by employees plus the actual direct costs to the IRS for performing the electronic search such as computer search time, runs, and the operator's salary).
	Review charges	\$21.00 per hour or fraction of an hour.
	Minimum charge	No fee charged if total charges are \$10.00 or less.
Media requesters	Copying charges	No charge for first 100 pages; \$.20 per page thereafter.
	Minimum charge	No fee charged if total charges are \$10.00 or less.
Educational or Non-commercial Scientific institution requesters	Copying charges	No charge for first 100 pages; \$.20 per page thereafter.
	Minimum charge	No fee charged if total charges are \$10.00 or less.
Other requestors (Individuals seeking records for their own use)	Copying charges	No charge for first 100 pages; \$.20 per page thereafter.
	Search charges	No charge for first 2 hours (or equivalent computer search cost); \$17.00 per hour or fraction of an hour plus any direct electronic search costs thereafter.
	Minimum charge	No fee charged if total charges are \$10.00 or less.
Other Charges	<p>Fees may be assessed at actual cost for any request that requires special services or materials.</p> <p>These services are provided at the discretion of the IRS and may include: certification fees (\$1.00 per document certified); shipping costs; employee transportation; contractor duplication costs; video tapes; computer disks; and shipping, etc..</p>	